

21 AUG 1953

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Proposed Legislation to Eliminate Creditability
of Federal Service to Civil Service Retirement
and Social Security

REFERENCE : S. 2324, 83d Congress, 1st session

1. This office has reviewed the referenced legislative proposal by Senator Williams to exclude employees eligible for civil service retirement from Social Security coverage. The bill provides that any employee who is entitled upon application to receive benefits under any United States retirement system will be excluded from coverage under Social Security. The bill also applies retroactively to employees covered under Social Security by the Social Security Amendments of 1950 and Executive Order 10180. The 1950 Amendments include Federal employees not subject to another United States retirement system. Executive Order 10180 provides for non-permanent appointments in the Executive Branch and for the exclusion of such employees from the Civil Service Retirement Act. The effect of the latter provision is to extend Social Security rights to temporary employees, involving some 900,000 people according to a recent statement of Senator Williams (Congressional Record, dated 8 July, p. 8429).

2. Although Senator Williams introduced the referenced measure for the expressed purpose of confining the retirement rights of Federal employees to the benefits of only one system, the digest accompanying the bill and the bill itself suggest that such an arrangement is not precluded. The digest (Congressional Record, dated 8 July, p. 8429) indicates that the bill would exclude from Social Security coverage those employees who are eligible for civil service retirement, but it specifically states "the amendment would not be applicable with respect to those Federal employees who have had some service under one of the retirement systems last mentioned and who will at some time in the future be entitled to retirement benefits under such system but who are not receiving or entitled to receive benefits under such system". Thus, the effects of S. 2324 appear to be as follows:

a. The bill would retroactively deny Social Security credit to Federal employees covered from 1950 ~~on~~ if they were civil service annuitants or were eligible for an annuity, upon filing an application, at the time they came within the purview

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of the Social Security Act of 1950. The language "by an individual who is entitled or upon filing application therefor would be entitled to receive benefits" might be interpreted to include those eligible for a deferred annuity at the time of their Social Security coverage or who possessed the qualifications for optional retirement at that time.

b. Analysis of the bill and the supporting digest suggests that civil service annuitants and Federal employees eligible for civil service retirement would be prohibited from subsequently gaining Social Security coverage. It would appear, however, that employees who have had civil service retirement deductions taken out without acquiring eligibility for retirement could come under Social Security by virtue of Federal employment in covered positions. Apparently, they could acquire Social Security eligibility and then later obtain eligibility for a civil service annuity in positions subject to the Retirement Act. Similarly, the bill does not seem to prevent an individual from first gaining Social Security eligibility in private or Federal employment and then acquiring eligibility for civil service retirement. Even the same periods of Federal service could presumably be credited under certain circumstances to both Social Security and civil service retirement. Under existing Civil Service Commission rules, periods of Federal service under Social Security can also be credited toward civil service retirement if the employee subsequently enters a position subject to the Retirement Act.

3. It is our opinion that no period of Federal service should be creditable to both Social Security and civil service retirement, and S. 2324 should be made explicit on this point. Otherwise, this office supports the concept contained in the bill that employees eligible for a civil service annuity should not be permitted to gain Social Security benefits in Federal employment. Moreover, we feel that individuals should be entitled to receive Social Security coverage in positions not subject to the Retirement Act as long as they have not acquired eligibility for an annuity. From an Agency standpoint, it would not be appropriate to exclude all categories of personnel from Social Security coverage whenever they had a previous history of retirement withholdings.

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Personnel Director

Concur:

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